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SUBJECT: CHANGES PENDING IN ECUADOR,S MINING SECTOR

Classified By: DCM Jefferson Brown, Reasons 1.4 (b&d)

¶1. (SBU) Summary: On January 25, the GOE announced that approximately 15% of the country,s mining concessions would revert to the State for purported non-payment or late payment of fees. Analysis of remaining concessions will continue and further reversions could be forthcoming. Meanwhile, Ecuador,s Constituent Assembly is considering a GOE proposal for further reversions and contract renegotiations. The Assembly is also expected to review and pass a new mining law by the end of March that would increase the state share of mining revenues, improve environmental controls, halt mining "speculation," enhance social responsibility programs, and possibly create a state mining company. Post is not aware of any U.S. companies significantly active in the Ecuadorian mining sector. End Summary.

Mining Concessions Revert to the State

¶2. (SBU) On January 25, the GOE announced that 587 mining concessions (out of about 4,000) would revert to the State due to nonpayment or late payment of patents (companies must pay a "patent fee" each year, which increases based on the number of years they have owned a concession). The payment deadline is formally March but companies have traditionally had a grace period of six months before facing penalties, and some take advantage of the grace period. Petroleum and Mining Minister Galo Chiriboga said that analysis of mining concessions will continue in upcoming days and additional concessions could be subject to reversion. The Ecuadorian Mining Chamber is working with the Petroleum and Mining Ministry as well as the Constituent Assembly (CA) to explain how the reversions will harm the sector and to seek a better solution.

¶3. (C) Some companies have been officially notified of the reversion of their concessions, but many, such as the large Canadian firm Ascendant Copper, have not. Of the 587 &reverted8 concessions, Ecuador,s Mining Chamber reports that about 500 are small-scale miners who are very upset with the announcement. Cesar Espinosa of the Mining Chamber reports small miners are ready "with dynamite sticks," but that he convinced them to wait and see how the situation develops. However, without clarity within a week or two, he expects they might begin protests. He reports large mining companies are angry and are consulting with their lawyers regarding possible legal actions (many of the larger mining companies in Ecuador are Canadian, at times with U.S. investment). The Canadian Embassy reports their mining clients are very upset, but as of January 29 none of them had been formally notified of reversions.

¶4. (U) No mining company has approached the U.S. Embassy to complain as of January 30. The Embassy is not aware of any

predominantly U.S. mining companies operating in Ecuador, although a few Canadian-registered companies have let us know of their U.S. investment and ties.

Constituent Assembly Considers More Reversions

¶5. (SBU) The GOE also submitted a mining "mandate" to the Constituent Assembly (CA) for approval, which requests additional reversions (a mandate is similar to a law but remains in force only for the duration of the CA). According to the Mining Chamber, the draft mandate would revoke concessions if a company had not paid its annual patent fee or paid late any time between 2004-2007, if a company had not "invested" anything by December 31, 2007 (although what constituted "investment" is not defined), or if the concession is in a protected area. The Chamber notes that although there is no mining in national parks in Ecuador, there is mining in protected forests.

¶6. (SBU) The proposed mandate would seek to negotiate new contracts with the remaining concessions, and if no final agreement was reached with those companies within one year, their concessions would be revoked as well. It also notes that the GOE could declare certain areas of the country "strategic areas" where only an Ecuadorian state mining company would have authorization to operate. Finally, it asserts that a new mining law will be presented to the CA within 60 days, which would provide for royalties of no less than 3% (although it does not define on what the royalty will be assessed). Artesanal miners from the provinces of El Oro, Loja, and Zamora Chinchipe are displeased with the potential mandate and met with members of the CA January 29 to discuss the situation. The Mining Chamber sent representatives to Montecristi to review the mandate with the CA, but is not optimistic that the CA will make substantial changes and expects the mandate could be approved the week of February 4.

New Mining Law Also in the Works

¶7. (SBU) The Correa Administration has said that the current mining law is inadequate as it does not provide for royalties, along with other deficiencies. The GOE has also said that environmental protections and penalties for environmental damage should be stronger, and that it deserves a larger share of mining company profits.

¶8. (C) The GOE reportedly plans to submit a new mining law to the CA for approval by March. Local media report that the GOE wants the law passed by the end of March (consistent with the deadline in the proposed mandate). Ecuador's Mining Chamber has been working with the Petroleum and Mining Ministry to try to help shape a draft law, and says that it is willing to work with the GOE on a number of key areas. These include GOE plans for a larger share of mining revenues for the state (in the form of royalties), improved environmental studies and controls, halting speculation (where companies hold a concession but do not develop it), and enhanced social responsibility programs. Although the Chamber is reluctant to see penalties imposed to stop mining "speculation" (which could be subjective), Espinosa reports that the Chamber could work with a GOE proposal in this area, such as a mandatory investment amount per hectare. One item the Chamber adamantly opposes is the GOE's proposal to create a state mining company, similar to Petroecuador in the petroleum industry.

Comment

¶9. (C) The reversions of mining concessions came as a surprise) even the Mining Chamber, which had been attempting to work with the GOE on its draft mining law, heard nothing of them until the day before they were announced. It is unclear who is behind the reversions and GOE-proposed mandate. Our understanding is that a mandate passed by the CA would only be in force for the duration of

the CA. It is therefore odd to first pass a short-term mandate and then a law on the same issue. Espinosa believes the reason is so that the GOE can first gain control over all of the concessions and then later negotiate new mining concessions/joint ventures under a new mining law. He does not believe the GOE wants to nationalize or keep full state control over mining concessions.

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